

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5929 of 2007()

[CRIME NO.204/2007 OF CHOKLI POLICE STATION]

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: PETITIONER/1ST ACCUSED

K.ABDUL RASHEED @ K.RASHEED,
S/O.MOHAMOOD, AGED 35 YEARS, VALIYAPRAMBATH,
RIYAZ MANZIL, GRAMATHI, P.O.CHOKLI,
THALASSERY.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTING S.H.O., CHOKLI POICE STATION,
KANNUR DIST., THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.5929 of 2007

Dated this the 1st day of October 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. Altogether there are three accused persons. The petitioner faces allegations in a crime registered for offences punishable inter alia under Section 420 I.P.C. That crime in turn was registered on the basis of a private complaint filed by the learned Magistrate and referred by the learned Magistrate to the police under Section 156(3) Cr.P.C. Investigation is in progress. The petitioner apprehends imminent arrest. The crux of the allegations against the petitioner is that he had purchased a vehicle from the de facto complainant as per the terms agreed upon in writing. A cheque was issued to the de facto complainant by the petitioner for discharge of liability as per that agreement. The said cheque was allegedly dishonoured. The petitioner had allegedly disposed of the vehicle to another person. That vehicle has ultimately been demolished and disposed of. It is alleged in these circumstances by the de facto complainant that the petitioner has committed the offence punishable inter alia under Section 420 I.P.C. The de facto complainant was the registered owner who had entered into the initial agreement with the finance company. The finance company is now proceeding against the de facto complainant inasmuch as the registration certificate has not been changed from the name of the de facto complainant to the petitioner herein.

2. The learned counsel for the petitioner submits that the allegations are totally false. It is the de facto complainant who was really guilty of not standing by the terms of the agreement. Prematurely the cheque was presented and the prosecution under Section 138 of the Negotiable Instruments Act was initiated. The learned Magistrate had already found the petitioner not guilty and has acquitted him of the said charge. There is absolutely no elements of any criminal offence in the offence alleged. At worst there is only a civil dispute between the parties. At any rate, it is not necessary to arrest the petitioner for such allegations as are raised in the complaint. The petitioner may, in these circumstances, be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor does not oppose the said prayer for anticipatory bail. In the facts and circumstances of this case to which I have already made brief reference, I am satisfied that the directions under Section 438 Cr.P.C can be issued in favour of the petitioner subject of course to appropriate terms and conditions.

4. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 08/10/2007.

ii) He shall be released on regular bail on condition that he executes a bond for Rs.25,000/-(Rupees twenty five thousand only)

with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioner shall make himself available for interrogation before the investigating officer between 10 a.m and 3 p.m on 09/10/2007 and 10/10/2007 and thereafter on all Mondays and Fridays between 10 a.m and 12 noon for a period of two months and subsequently as and when directed by the investigating officer in writing to do so.

(iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(v) If he were arrested prior to 08/10/2007, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 08/10/2007.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007